

**TESTIMONY OF**

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**Before the**

**Committee on Resources  
Subcommittee on Water and Power**

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Mr. Chairman and Members of the Committee, I am pleased to have the opportunity to discuss with you today recent diplomatic efforts of the United States Government to obtain Mexican water deliveries on the Lower Rio Grande pursuant to the 1944 Treaty between the United States and Mexico on the Utilization of the Waters of the Colorado and Tijuana Rivers and of the Rio Grande (1944 Water Treaty).

This treaty governs the allocation between the United States and Mexico of the waters from those specified rivers and tributaries. It has served for almost 60 years as an effective model of cooperation between nations sharing a common border and a common resource in a manner that is beneficial to both nations.

Today our over-all relationship with Mexico remains solid. Both of our countries are committed to furthering cooperative efforts across a broad range of activities. A strong relationship with Mexico is integral to the well-being and security of the United States. Our bilateral relationship with Mexico is grounded, in increasing measure, in shared values and perspectives on the world.

However, today we see how increasing strains and competing demands on a finite resource—a shared resource—have put strains on our relationship. We would not have been invited to testify before you today if we did not have a serious problem with Mexico on water. It is undeniable that this region and its neighbors across the border have suffered from prolonged drought. Nonetheless, we believe Mexico must take additional measures to make water available to the United States in accordance with the 1944 Waters Treaty.

Under this treaty, Mexico has an obligation to deliver to the United States one-third of the flow reaching the main channel of the Rio Grande from six Mexican tributary rivers. The treaty mandates this delivery be not less as an average amount in cycles of five

consecutive years than 350,000 acre-feet of water annually. In situations of extraordinary drought or serious accident to the hydraulic systems on the measured Mexican tributaries, any deficiencies in water deliveries existing at the end of a five-year cycle are to be made up in the following five-year cycle.

In 1969 the United States and Mexico agreed in IBWC Minute 234 that in the event of a deficit in a five-year cycle, the deficit must be made up in the following five-year cycle, together with any quantity of water that is required to avoid a deficiency in that cycle.

Mexico ended the 1992-1997 water accounting cycle with an unprecedented deficit of over one million acre-feet of water. Mexico has claimed that it was unable to provide more water in the 1992-1997 period due to extraordinary drought. The term "extraordinary drought" is not defined under the treaty, nor do the two governments have an agreed upon interpretation of that term. Deliveries in the current water accounting cycle, i.e. from 1997-2002, are also lagging far behind what is called for under the treaty. Unless significant water deliveries ensue, Mexico could end this water accounting cycle with a cumulative deficit of almost 1.7 million acre-feet of water owed to the United States.

This poses a very difficult situation for our two countries, and is simply not acceptable. It is a fundamental tenet of treaty law that the parties must respect their obligations arising under treaties and implement those obligations in good faith. It is also well established that disputes concerning a treaty should be settled in conformity with the terms of the treaty and principles of international law.

We believe that, in accordance with Minute 234, Mexico must cover the deficit by September 30, 2002, and that Mexico also has a current cycle obligation due at the same time, although as a practical matter it may not be possible for Mexico to do so. Mexico has stated that it has paid off the past cycle deficit and that due to the continued existence of extraordinary drought conditions, it has an additional five-years in which to cover the shortfall. However, the final water accounting of the waters Mexico has delivered in the 1997-2002 period and assignment of those waters to either the past or current cycle has not taken place. Thus, whether or not Mexico has paid off the deficit and fulfilled the current cycle obligation will not be determined until after September 30, 2002.

Since this issue was brought to our attention in 2000, the Department of State has been actively supporting the efforts of the

International Boundary and Water Commission (IBWC) to redress this issue. The U.S. and Mexican Governments entrusted the IBWC with the exercise of the rights and obligations of the two governments under this treaty and with the settlement of any disputes that arise under it. The IBWC is the appropriate forum for developing specific plans for water delivery schedules due to its technical expertise in the area of water management. Since 1997 this issue has been at the forefront of the IBWC agenda.

The Department of State's role has been to negotiate, mediate and to focus attention on this issue in both Washington and Mexico City. The Department and our Embassy in Mexico City have done that and Mexico has partially responded. For the past two water cycle years, Mexico, in what we interpret as a positive step, delivered more water than the annual average of 350,000 acre-feet required under the 1944 Waters Treaty. This effort was made in what was most likely some of the driest of the past ten years.

The Department of State has put this matter at the top of the agenda for the last session of the U.S.-Mexico Binational Commission Meeting that was convened in Washington in September of 2001 and highlighted its importance in the Border Affairs Working Group, with the participation of Secretary of State Colin Powell and Mexican Foreign Minister Jorge Castaneda. Once again we stressed the high importance of this issue to the United States Government. We urged Mexico to make more water available on the lower Rio Grande in order to make a good faith repayment on the debt and to avoid a deficit in the current cycle.

Our Ambassador in Mexico City, Jeffrey Davidow, has worked particularly hard to focus the Mexican Government's attention toward the need to make greater progress in this area. The Secretary of State has held lengthy discussions on this issue with the Mexican Foreign Minister. No less than three other United States cabinet officials have urged Mexico to make immediate water deliveries in conversations held with their Mexican counterparts in the last few months.

Everyone in this Administration is aware of the high priority and genuine concern President Bush has for this issue. Every meeting and every conversation President Bush has had with President Fox has been an opportunity to impress upon President Fox the need for Mexico to do more to meet its commitments. It was President Bush's efforts at his first meeting with President Fox at Guanajuato that led to the conclusion of Minute 307 last March. This effort at partial fulfillment of its obligation to the United States under the 1944 Waters Treaty represented a true good faith effort by Mexico. It is

unfortunate that this positive first step, was not followed up, and that, to date, Mexico has failed to comply with the terms of Minute 307, not only with respect to water deliveries for the past year, but also with respect to the commitment to develop a schedule of deliveries for this year by December 2001.

In all of our efforts, we have stressed that any plan to be developed must be coupled with a commitment to long-term solutions. We urged Mexico to work within the IBWC to develop a comprehensive solution to this problem and to develop a formula that would give the highest priority to honoring its treaty obligations to the United States. We recognize that measures to improve infrastructure and conserve water are a must—on both sides of the border, as evidenced in the legislation you have come to consider. Water is too precious a commodity to waste.

When President Bush traveled to Monterrey in March, he again raised the water problem with President Fox in strong terms. Following the meeting, National Security Adviser Condoleezza Rice contacted the Mexican Under Secretary of State, Enrique Berruga, and stressed the need to have a commitment to make immediate water deliveries for the benefit of Texas farmers. In response, the Under Secretary has consulted with Mexican officials and expects to come to Washington soon. Recognizing the urgency of this problem for Texas farmers, we intend to meet with Under Secretary Berruga's delegation and again impress upon Mexico the critical need to redress this matter. We believe that neighbors can not be allowed to become estranged but must work together for the mutual benefit of both of their peoples.

Thank you for the opportunity to testify today. I would be pleased to respond to any question you or other members of the Committee may have.